vessel m.v. YANTI – safely arrived outer anchorage Karachi not later than September 9, 1976 and that the notice of readiness has been tendered to openers.

4. Your certificate to the effect that you have cabled master of the vessel in Karachi as well as your representative in Karachi authorizing delivery of the above vessel M.V. Yanti physically to the Habib Bank Limited on condition, as she stands safely afloat and substantially intact during business hours of a working day. Your certificate that you have cabled Habib Bank Limited, Safe Deposit Vault Branch, Karachi confirming Authorisation sent to the Master of the Vessel.

5. Your undertaking to supply the certificate of deletion from the Lloyds Registry as soon as possible after delivery of the said vessel but not later than four months after the date of delivery of the vessel in Karachi.

6. Your written undertaking accepting full responsibility and or liability for any debts, encumbrances maritime and other liens and liabilities of every description whatsoever incurred up to the time of delivery and in no case the importers are responsible for those liabilities, if any.

7. Certificate from competent authority confirming that the sellers who have signed the Bill of Sale are the owners of the ship, m.v. YANTI.

8. Documentary evidence by way of original copy of builders letter or plan substantiating vessels light displacement of minimum 4267 long tons (excluding cement or non-metallic ballast).

9. A certificate of the Master of the Vessel to the Bank that he has arrived at Karachi outer anchorage and that the vessel is ready for delivery and on receipt of such information the Bank will instruct the correspondents bank in Singapore immediately to release the payment to the Beneficiary without any delay.

10. Sellers written undertaking that any further documents which may be required by the Buyers to comply with the Govt. of Pakistan Rules, will be provided as and when required and due diligence will be shown in Expediting submission of such documents.

This letter of credit is valid for negotiation not later than September 24, 1976.

Drafts must be marked 'Drawn under Habib Bank Limited Letter of Credit No 48552 and amounts thereof endorsed on this letter of credit by negotiating bank.

We hereby agree with drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this credit that the same shall be duly honoured on due presentation. This credit is subject to Uniform Customs and Practice for Documentary Credits (1974 Revision), International Chamber of Commerce, Publication No. 290.

Transmitted through HABIB BANK LIMITED, SINGAPORE who are authorised to negotiate your drafts on receipt of our cable authorisation.

11. Sellers written undertaking that the ship is free from Debts, Encumbrances, Maritime Liens and/or claims at the time of delivery of the Ship to the Buyers.

For Habib Bank Limited
S.D.V. Branch, Karachi

Sgd Sgd
Manager Officer

SINGAPORE BUILDING CORPORATION LTD. v. LEE SAE THUAN

[D.C.A. (Thean J.) March 2, 1984]
[Singapore – District Court Appeal No. 29 of 1982]

Landlord & Tenant – Rent-controlled premises – Claim for possession against tenant – Whether there was breach – Control of Rent Act (Cap. 266), ss. 4, 5, 15(1)(b) & 16(c).

The facts of the case were as follows. The appellants/plaintiffs were the owners of the premises and the respondent/defendant was the tenant thereof. The premises were rent-controlled within the meaning of the Control of Rent Act (Cap. 266). The respondent had been a tenant of the appellants since November 1975. Prior to that date, the premises were rented out to D.W.2 who had carried on thereat for about 30 years the business of a barber shop. In November 1975, for a sum of $20,000/- she assigned the tenancy of the premises to the respondent. The assignment was made informally with the permission of the appellants, but for obvious reason the payment of $20,000/- was not disclosed to the appellants.

By a notice to quit dated October 7, 1976 the appellants terminated the contractual tenancy of the respondent on November 30, 1976 and thereafter commenced proceedings in the District Court against the respondent for the recovery of vacant possession of the premises. Before the District Court, the appellants contended (1) that the premises were domestic premises within the meaning of the Control of Rent Act and that neither the respondent nor any of his children was residing thereat and therefore under section 16(c) of the said Act, the appellants were entitled to recover possession of the said premises; (2) that it was a condition of the tenancy that the premises were to be used only for residential purposes and there was a breach of such condition by the respondent in using the premises for business purposes.

The learned District Judge dismissed the claim by the appellants for vacant possession of the premises. The appellants appealed.

Held, dismissing the appeal: (1) there was no evidence at all that it was a condition or a term of the tenancy that the premises were to be used only for residential purposes. There was no basis therefore in the contention of the appellants that there was a breach of such a condition of the tenancy on the part of the respondent;

(2) the appellants had failed to establish that (a) an order for possession was considered as reasonable by the court and (b) suitable alternative accommodation was available to the respondent;

(3) a breach of section 4 of the said Act does not have the effect of rendering void the assignment of the tenancy of the premises by D.W.2 to the respondent. If section 4 applies, it would be only D.W.2 who committed the offence under section 5. The appellants in effect made a fresh grant of tenancy of the premises to the respondent and such a grant was not vitiated or in any way affected by the payment of the $20,000/- made by the respondent to D.W.2.

Cases referred to:

(1) *Hardial Singh* v. *Malayan Theatres Ltd.* [1953] M.L.J. 180.
(2) *Palaniappa Chettiar* v. *Arunasalam Chettiar* [1962] M.L.J. 143.
(3) *Abouloff* v. *Oppenheimer & Co.* (1882) 10 Q.B.D. 295.

DISTRICT COURT APPEAL.

Kirpal Singh for the appellants.
Choo Kwun Kiat for the respondent.

Cur. Adv. Vult.

Thean J.: This is an appeal from the judgment of the District Court dismissing the claim by the Appellants for vacant possession of the premises known as No. 620, Serangoon Road, Singapore ("the premises").

The Appellants, the plaintiffs in the proceedings before the District Court, are the owners of the premises, and the Respondent is the tenant thereof. It is common ground that the premises are premises within the meaning of the Control of Rent Act (Cap.266) ("the Act"). The Respondent has been a tenant of the Appellants since November 1975. Prior to that date, the premises were rented out to one, Marimuthummal, D.W. 2, who had carried on thereat for about 30 years the business of a barber shop. In November 1975, for a sum of $20,000 she assigned the tenancy of the premises to the Respondent. The assignment was made informally with the permission of the Appellants, but for obvious reasons the payment of $20,000 was not disclosed to the Appellants. According to the evidence of D.W.2, she took the Respondent to the Appellants' office "to change the name to that of defendant" and "that was done in the office of the landlord." The Appellants received (presumably at their request) a sum of $300 as "Rent Deposit" for the premises from the Respondent and issued to the Respondent a receipt (Exhibit D.2). It seems to me that the inference to be drawn from these facts is that the Appellants accepted the Respondent as the tenant of the premises and made a fresh grant of tenancy to him at that time.

By a notice to quit dated October 7, 1976 the Appellants terminated the contractual tenancy of the Respondent on November 30, 1976 and thereafter commenced proceedings in the District Court against the Respondent for recovery of vacant possession of the premises.

Before the District Court the Appellants proceeded on two grounds for recovery of vacant possession of the premises. First, it was contended that the premises were domestic premises within the meaning of the Act and that neither the Respondent nor any of his children was residing thereat at the material time and therefore under section 16(c) of the Act, the Appellants were entitled to recover possession of the premises, Secondly, it was contended that it was a condition of the tenancy that the premises were to be used only for residential purposes and there was a breach of such condition on the part of the Respondent in using the premises or a part thereof for business purposes. Though it was not explicitly pleaded or argued, this ground is founded on section 15(1)(b) of the Act.

In so far as the first ground is concerned, there does not appear to be any dispute that the premises are domestic premises within the meaning of

the Act and the only issue is whether the Respondent or any member of his family was residing at the premises at the material time. On this issue the learned District Judge held that the Appellants had failed to establish a case falling within section 16(c) of the Act. On the evidence before him, the learned District Judge found that the Respondent and his three sons were residing at the premises and at the time of the hearing the Respondent himself was residing thereat. I find no reason for disturbing his finding on this point.

As for the second ground relied upon by the Appellants, a great deal of argument has developed on the question whether there has been a breach of the condition of the tenancy, and if there was such a breach, whether there has been a waiver of the breach. For myself, I find such arguments totally unnecessary. There is no evidence at all that it was a condition or a term of the tenancy that the premises were to be used only for residential purposes. According to D.W.2, when she took the Respondent to the Appellants' office "to change the name to that of the defendant", they saw a male Chinese in the office and he "did not say what the premises could be used for." The deposit receipt for the payment of $300, (Exhibit D.2), issued by the Appellants to the Respondent does not contain any such condition of the tenancy, though it stipulates specifically two conditions of the tenancy, which are of no relevance here. I find it difficult to accept that there was ever such a condition of the tenancy agreed to by the Appellants and the Respondent, having regard to the fact that at or immediately before the time of the assignment of tenancy by D.W.2 to the Respondent the premises were used and had been used for over 30 years for commercial purposes. The learned District Judge has in a way found that there was no such condition of the tenancy:

> "I accepted the defendant's evidence that the plaintiffs were aware that the premises were also being used by him for commercial purposes, and that at the time of the transfer of the tenancy he had informed the landlords that he was a furniture dealer and would be storing furniture on the premises. There was sufficient evidence that the premises were used as commercial premises for a considerable period in the knowledge of the plaintiffs, their rent collecting agents and their representatives.
>
> Clearly, the plaintiffs were not concerned as to what use the premises were put to until they were considering grounds to evict the defendant. They continued to accept rents from both the barber shop proprietress, Marimuthummal (D.W.2) and the defendant with clear knowledge that business activities were being conducted on the premises."

Since it has not been established by the Appellants that there was such a condition of the tenancy, the question of a breach thereof and consequently the question of any waiver of such breach do not really arise. There is no basis therefore in the contention of the Appellants that there was a breach of such a condition of the tenancy on the part of the Respondent.

In the Statement of Claim, the Appellants also claimed recovery of possession under paragraph (1) of section 15(1) of the Act, namely, that the Court considers it reasonable that an order for recovery of possession should be made or be given and is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order or judgment takes effect. This ground was not canvassed before the learned District Judge, and according to counsel for the Respondent, was abandoned by the Appellants before the District Court; a fact not seriously denied by the counsel for the Appellants. However, I allowed counsel for the Appellants to proceed with his arguments on this ground. To succeed on this ground, the Appellants will have to establish that (a) an order for possession is considered as reasonable by the Court and (b) suitable alternative accommodation is available to the Respondent: *Hardial Singh v. Malayan Theatres Ltd*[1]. Both requirements, however, the Appellants have failed to satisfy.

The last ground of appeal urged upon me by counsel for the Appellants is that the Respondent had acquired the tenancy of the premises unlawfully. As was said before, in consideration of a sum of $20,000 paid by the Respondent, D.W.2, the previous tenant, assigned to him the tenancy of the premises. On the basis of that payment, counsel for the Appellants boldly argued that section 4 of the Act had been contravened, that an offence under section 5 had been committed, and that consequently the Respondent being a "a party to the illegality" did not acquire a "tenancy of the premises." In support of his arguments he relied on the authorities of *Palaniappa Chettiar* v. *Arunasalam Chettiar*[2] and *Abouloff v. Oppenheimer & Co.*[3]

I have no difficulty in rejecting this argument and find the authorities of no assistance on the point before me. A breach of section 4 of the Act does not have the effect of rendering void the assignment of the tenancy of the premises by D.W.2 to the Respondent. I refrain from expressing any opinion as to whether section 4 really ap-

plies to the payment of the sum of $20,000 by the Respondent to D.W.2, as this question does not really arise in this case. Suffice here to say that if section 4 is applicable, it would only enable the Respondent to recover the sum from D.W.2. The Respondent did not really contravene section 4 and therefore did not commit an offence under section 5 of the Act. Obviously it was D.W.2 who required the payment of the sum of $20,000 as consideration for the assignment of the tenancy, and if section 4 applies, it would be only D.W.2 who committed the offence under section 5. That, however, should not affect the tenancy acquired by the Respondent. The object of the rent control legislation is to protect a tenant and not to penalise him. In any event, as I said before, the Appellants in effect made a fresh grant of tenancy of the premises to the Respondent and such a grant was not vitiated or in any way affected by the payment made by the Respondent to D.W.2.

I therefore dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Kirpal Singh & Co.; Choo & Yap*

MALAYSIAN REPORTS

HOTEL EQUATORIAL (M) SDN. BHD. v. NATIONAL UNION OF HOTEL, BAR & RESTAURANT WORKERS & ANOR.

[F.C. (Lee Hun Hoe C.J. (Borneo), Seah & Syed Agil Barakbah F.JJ.) February 7 & March 24, 1984) [Kuala Lumpur – Federal Court Civil Appeal No. 85 of 1983]

Industrial Law – Application to refer questions of law to the High Court – Jurisdiction of Industrial Court – Function of High Court – Industrial Relations Act, 1967, s. 33A(1).

In this case the Industrial Court had made an award binding the Hotel and the Union. Pursuant to section 33A (1) of the Industrial Relations Act, 1967, the Hotel applied for certain questions of law dealing with (a) service charge (b) outside catering allowance (c) union notice board and check-off and (d) non-statutory provisions to be referred to the High Court for determination. The application was dismissed by the Industrial Court. The Hotel then took the matter to the High Court by way of certiorari and mandamus proceedings in respect of questions (a), (b) and (c) only. After hearing legal arguments the learned Judge allowed the application relating to question (b) (i) and (b) (ii) and question (c) (i), (ii) and (iii) but dismissed the application relating to question (a) (i), (ii) and (iii). The Hotel appealed to the Federal Court. There was no cross-appeal by the Union.

Held: (1) the discretion conferred on the Industrial Court is not an unfettered discretion but a limited one and in the exercise of its discretion the Industrial Court must have regard to the four paragraphs enumerated in section 33A (1) of the Industrial Relations Act;

(2) in rejecting the application relating to question (a) (i) the Industrial Court has misconceived its functions under section 33A (i) of the Act, has failed to consider the question submitted to it and has asked itself the wrong question. It follows that the Industrial Court rejected question (a) (i) on grounds which it has no right to take into account and that its decision was a nullity;

(3) in dismissing the application relating to question (a) (ii) the Industrial Court purported to adjudicate on the question which it has no power to do under section 33A (1) of the Act. It follows that the Industrial Court acted in excess of the limits of its jurisdiction or in the absence of jurisdiction and that its decision was a nullity;

(4) it is quite plain that in this case the Industrial Court has not determined the question (a) (iii) which it is required to determine under section 33A (1) of the Act. It follows that the decision of the Industrial Court was a nullity;

(5) in this case the learned judge of the High Court appears to have misconceived his duty or function when he purported to substitute his own reason for that of the Industrial Court;

(6) in this case the decision of the Industrial Court relating to question (a) (i), (ii) and (iii) must be quashed and an order of mandamus issued to direct the Industrial